IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.....

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, and THE STATE OF FLORIDA, et al.,

Petitioners,

vs.

SOUTHWEST TAMPA STORM SEWER DRAINAGE DISTRICT, and RECONSTRUCTION FINANCE CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Petitioners, Trustees of the Internal Improvement Fund of the State of Florida, a State Agency, the State of Florida, a sovereign State, J. M. Lee as Comptroller of the State of Florida and J. Edwin Larson as Treasurer

of the State of Florida; Anthony Schleman, as Tax Collector and Chas. H. Pent, as Clerk of the Circuit Court of Hillsborough County, tax collecting officials of the State of Florida, and County of Hillsborough, pray that a Writ of Certiorari issue to review the decree of the Circuit Court of Appeals for the Fifth Circuit, entered May 8, 1944, affirming the decrees of the District Court of the United States for the Southern District of Florida, entered April 27, 1942, August 15, 1942, and September 18, 1942.

I.

SUMMARY AND SHORT STATEMENT.

This is an action in eminent domain brought by the United States for the purpose of taking title in fee simple absolute to certain lands in Hillsborough County, Florida, for an Army Air Base. Petition for condemnation, and declaration of taking were filed in the District Court and deposit was made into the Registry of said Court in the latter part of 1939. The proceedings were had in conformity with the Act of Congress approved February 26, 1931, Chapter 707, paragraph 1, 46 Stat. 1421, 40 U.S.C.A. 258(a). The amount of compensation was determined by a verdict of a jury rendered January 23, 1942, and a judgment entered thereon on May 29, 1942, (R-101).

No objection was made, nor is now raised, to the taking of the property by the United States or to the compensation paid therefor. The State of Florida and the Trustees of the Internal Improvement Fund, an agency of the State of Florida, and Hillsborough County objected to the orders of the Federal District Court fixing the priority of

payment of tax liens and ordering disbursement of the funds paid into Court for compensation for the taking of said lands, as will be more fully set out hereinafter.

A portion of the lands condemned lay within the boundaries of Southwest Tampa Storm Sewer Drainage District, established under the name of Interbay Drainage District (its name being changed in 1927 by Amendatory Decree). The District was created under and pursuant to the General Drainage Laws of the State, Chapter 6458, Laws of Florida, Acts of 1913, and subsequently Sections 1098 to 1150 RGS 1920; Sections 1451 to 1507 CGL 1927; Sections 298.01 to 298.56, Florida Statutes 1941. Liens are claimed on said lands for unpaid installments of Drainage Assessments and maintenance tax.

The Reconstruction Finance Corporation claims to be the holder of the majority of the bonds of said Drainage District. Its rights are substantially co-extensive with the rights and claims of the Drainage District.

The State of Florida is a sovereign State, and the Trustees of the Internal Improvement Fund is an agency created under the Laws of the State of Florida, Chapter 610, Laws of Florida, Acts of 1855, Section 253.01, Florida Statutes 1941, and have power to sell tax forfeited lands under Chapter 18296, Laws of Florida 1937, Section 192.38, Florida Statutes 1941. The County of Hillsborough is a political subdivision of the State and is represented through its tax collecting officials.

Under Chapter 18296, Laws of Florida, Acts of 1937, lands in the State of Florida on which there were outstanding State and County tax certificates two years old at the

time of the passage of the act, and thereafter unredeemed, vested on June 9, 1939, in the State of Florida, free and clear of all liens, except those liens of equal dignity with State and County taxes.

Under the taxing laws of the State of Florida, liens for State and County taxes represented by tax certificates (not covered by Chapter 18296, supra), were sold to the State and the subsequent unpaid taxes were a lien on lands superior to all other liens (Chapter 10040, Acts of 1925, Chapter 14572, Acts of 1929, Chapter 17442, Acts of 1935, Section 192.21, Florida Statutes 1941).

The Drainage District, by its answer and amendment thereto (R-25 & 27), and petition for distribution (R-79), asserted liens in favor of the District for drainage assessments and taxes and right to payment and satisfaction thereof from the award.

The Reconstruction Finance Corporation, by answer (R-19), alleged its ownership of the bonds of the District and as the owner of the bonds claimed a lien against the land.

The State of Florida claimed taxes due the State and County (R-23), and the State and Trustees of the Internal Improvement Fund by Answer (R-42), claimed sums deposited in Court for the taking of "Murphy Lands", i e., lands forfeited to the State under Chapter 18296, supra. In reply to claim of Drainage District (R-63), the State urged that the lien of the Drainage District for annual installments was based on levy of total tax made pursuant to Section 1119 RGS 1920, as amended by Chapter 9129, Acts of 1923, and that the installment taxes levied pursuant

to such total tax levy were not of equal dignity with the lien of State and County taxes.

The State and County claimed the drainage taxes and assessments levied by said District were not of equal dignity with liens of taxes for State and County, except the maintenance taxes levied subsequent to effective date of Chapter 12040, Laws of Florida, Acts of 1927. Those maintenance taxes levied subsequent thereto were on a parity with the liens for State and County taxes. That where liens for taxes were claimed by the District and State and County, the liens of State and County taxes were entitled to be paid with interest thereon in full where priority was claimed, and on a proportionate basis where the liens were of equal dignity.

In reply filed by State of Florida and Trustees of the Internal Improvement Fund to amendment of answer of Drainage District (R-67), title to certain of the parcels was claimed to be vested in the State of Florida pursuant to Chapter 18296, supra, and by virtue of the lien of the State being superior to the drainage taxes or assessments the Trustees were entitled to be paid the full amount of the award for the taking of the lands, the lien of the Drainage District being eliminated on the vesting of title in the State, except as to maintenance taxes levied subsequent to effective date of Chapter 12040, Laws of Florida, Acts of 1927.

The District Court in its Order of April 27, 1942 (R-90), ordered that the lands vested in the State pursuant to Chapter 18296, Laws of Florida, Acts of 1937, were subject to and burdened with liens of unpaid drainage taxes

and assessments, and that proceeds for taking such lands should be applied first to payment of such liens and second, to the Trustees of the Internal Improvement Fund; also that where the State had no title and liens existed for unpaid State and County taxes and drainage taxes, such liens were of equal dignity and where compensation for taking of lands was inadequate to pay all such liens, that the liens were to be paid on a pro rata basis out of such funds.

On September 18, 1942, (R-116), the Court, by order, directed distribution of funds paid for lands, title to which was vested in the State of Florida. In so doing, the Court directed that amount found due for drainage taxes assessed prior to taking of title by the United States, be paid and residue paid to the Trustees of the Internal Improvement Fund.

By another Order of the same date (R-112), the Court ordered distribution of the compensation awarded for a portion of the lands which had not vested in the State but liens for taxes were claimed by the State and County and the Drainage District. The Court held that such liens were of equal dignity and on a parity, and where the amount of compensation was inadequate to pay all of such liens, the award should be pro rated without preference.

The issues made by the pleadings were and are as follows:

1. As to lands forfeited to the State under Chapter 18296, supra:

(a) The State through the Trustees of the Internal Im-

provement Fund, claimed title, free and clear of all liens (except drainage liens for maintenance levied subsequent to effective date of Chapter 12040, Laws of Florida, Acts of 1927). That Chapter 12040 not being intended to act retroactively, did not operate upon lien of assessment made prior thereto, and the annual installments being merely to fix maturity dates of the assessment.

(b) The Drainage District contended successfully that Chapter 12040, supra, acted to make all annual assessments and maintenance taxes levied prior and subsequent to effective date thereof, of equal dignity with liens for State and County taxes, and on vesting of title in the State such drainage liens remained on such parcels and were entitled to payment in full prior to distribution of any funds to the Trustees of the Internal Improvement Fund.

2. As to lands not claimed to be owned by the State.

(a) The State and County claimed that the lien represented by certificates for State and County taxes and subsequent omitted taxes, were superior to liens of drainage taxes (except liens for maintenance levied subsequent to effective date of Chapter 12040, supra), for the reason that Chapter 12040, supra, which purported to establish drainage liens as equal in dignity with State and County taxes, did not affect liens established by assessment of taxes, prior to the effective date of the act, and that annual assessment of taxes merely fixed the maturity dates of the lien, and the State and County liens were entitled to priority of payment.

(b) The Drainage District contended successfully, that Chapter 12040, supra, constituted their liens of equal dig-

nity with State and County liens, and that such District was entitled to share in the proceeds paid into Court on a pro rata basis.

3. The State and Trustees urged that the issues made by the claim of the State for the proceeds deposited into Court for the taking of tax forfeited lands (those lands vested in the State under Chapter 18296, Acts of 1937), and the claim of the Drainage District to be paid out of such proceeds a sum of money alleged to be due for the satisfaction of its liens for drainage taxes and assessments, constituted a suit by the Drainage District against the State of Florida, to which suit the State has never given its consent. That under Florida decisions the State could not be sued by the Drainage District to enforce the lien against such tax forfeited lands, and the claim of such liens as against the proceeds deposited in place of the lands constituted a suit against the State prohibited by the Constitution and Statutes of the State of Florida (Prince-Hall Masonic Building Association vs. City of Jacksonville, 149 Fla. 109, 6 So. 2d. 250).

After denial for Petition for Rehearing (R-104), the Trustees of the Internal Improvement Fund and others, entered their appeal to the Circuit Court of Appeals of the Fifth District, on October 26, 1942, and on the 8th day of May, A. D. 1944, said Court entered its judgment (Exhibit A) affirming the United States District Court of the Southern District of Florida, said opinion affirming the cause solely upon the merits.

II.

THE DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The opinion of the Circuit Court entered May 8, 1944, is not yet reported and for convenience is printed in an appendix to the brief filed with this petition, and therein market Exhibit A.

III.

BASIS OF JURISDICTION.

The Supreme Court of the United States has jurisdiction to review the decision of this cause of the United States Circuit Court of Appeals for the Fifth Circuit, under the provisions of Section 240 (a) of the Judicial Code of the United States, 28 U. S. C. A. 347 (a).

The opinion of the Circuit Court of Appeals for the Fifth Judicial Circuit was filed May 8, 1944, and this petition is presented and filed in the office of the Clerk of this Honorable Court within a time less than ninety days from the date upon which said opinion was filed.

IV.

QUESTIONS PRESENTED.

The fundamental questions presented in the petition are as follows:

(a) The Circuit Court of Appeals erred in holding in its opinion and judgment (Exhibit A) that the action of the Drainage District in making and prosecuting its claim for part of the proceeds deposited in Court as compensation for taking State owned lands and the order of the District Court directing distribution of such funds to pay such claims for taxes and assessments claimed by the said district, did not constitute a suit against the State.

(b) The Circuit Court of Appeals in and by its opinion and judgment (Exhibit A) erred in affirming order of lower Court of April 27, 1942, and subsequent orders, holding that title to tax forfeited lands vested in the State of Florida under Chapter 18296, Laws of Florida, Acts of 1937 (Murphy Act) was subject to and burdened with liens for unpaid drainage taxes, and that such taxes should be paid in full before the State of Florida received distribution of the award (R-133).

(c) The Circuit Court of Appeals erred in and by its opinion and judgment (Exhibit A) affirming order of the lower Court, dated April 27, 1942, and subsequent orders, holding that Drainage District taxes were of equal dignity with State and County taxes and neither was entitled to priority of payment over the other. (R-133).

(d) The Circuit Court of Appeals erred in and by its opinion and judgment (Exhibit A) affirming order of the District Court of April 27, 1942, and subsequent orders, holding that Section 2 of Chapter 12040, Acts of 1927 (Section 1472 CGL 1927), which provides that drainage liens shall be of equal dignity with liens for State and County taxes, changed the priority of drainage liens that were levied and assessed prior to the effective date thereof, when

such drainage liens were not of equal dignity with State and County taxes. (R-133).

(e) The Circuit Court of Appeals erred in and by its opinion and judgment (Exhibit A) affirming order of the District Court of April 27, 1942, and subsequent orders, holding that the acquisition of title by the State under Chapter 18296, supra, changed the dignity, status and interest of the State therein, in that, such State interest became inferior to lien of Drainage District by requiring payment of drainage taxes in full before distribution of any proceeds to the State. (R-134).

V.

REASON FOR GRANTING THE PETITION.

The Circuit Court of Appeals for the Fifth Circuit, in determining the manner and method of distributing funds deposited for taking of lands by eminent domain to the Drainage District for claims for drainage taxes and assessments, and to State and County for taxes, and the right of the Drainage District to be paid for drainage taxes and assessments out of the award for taking State owned lands, necessarily had to construe Statutes of the State of Florida authorizing Drainage Districts to assess drainage taxes upon lands; the effect of Chapter 12040, Laws of Florida, Acts of 1927, purporting to make such liens of equal dignity; to determine the priority of the various liens, together with the question of the liens that remain against State lands on vesting of a portion of the lands in the State under Chapter 18296, Laws of Florida, Acts of 1927. The

construction placed on such acts by the said Court is probably in conflict with applicable Florida law.

Section 9, Chapter 18296, Laws of Florida 1937, (Appendix B), and applicable portions of Florida laws relating to levy of taxes by the Drainage District and the State and County, to-wit:

Portion of Section 1114 RGS 1920, Appendix C.

Portion of Section 1115, as amended by Chapter 9129, Laws of Florida 1923, Appendix D.

Portion of Section 1119 RGS 1920, Appendix E.

Portion of Chapter 12040, Laws of Florida, Laws of 1927, Appendix F.

Portion of Section 696 RGS 1927, Appendix G.

Portion of Chapter 10040, Laws of Florida, Acts of 1925, re-enacted by Chapter 14572, and Section 2 of Chapter 17442, Acts of 1929 and 1935, Appendix H are in the order above stated, attached to the appendix of the brief attached to this petition.

That said Circuit Court of Appeals, in determining that the action of the Drainage District in filing claim for drainage taxes and assessments and claiming right to be paid therefor out of funds deposited for the taking of State owned lands, and in determining that the orders of the Court ordering payment of such claims out of such funds did not constitute a suit against the State of Florida, rendered a decision upon a Federal and State Constitutional question that is of gravity and general importance, such decision being in conflict with applicable Florida and Federal law.

That Section 22, Article III of the Constitution of the State of Florida provides:

> "Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating."

In the case of Prince-Hall Masonic Building Association vs. City of Jacksonville, 6 So. 2d. 250, decided December 16, 1941, the Supreme Court of the State of Florida stated that the State might not be joined in a suit to enforce liens against State lands forfeited to the State under Chapter 18296, supra.

Eminent Domain proceedings although bought in the Federal Courts conform to the practice and pleadings of the State within which such action is brought. (Mar. 3, 1911, C231, No. 291, 36 Stat. 1167, 40 USCA Section 258.) The claim against such State lands being unenforceable as a suit against the State, the claim against the proceeds deposited into Court for the taking of such lands is a suit against the State, as such proceeds stand in place of the lands and only those rights *enforceable* against the lands are enforceable against the proceeds.

Thus the decisions below apparently are contrary to the local law and the applicable decisions of this Honorable Court, and the determination of those questions by this Court will settle the questions and make for uniformity.

WHEREFORE it is respectfully submitted that this petition for Writ of Certiorari to review judgment of the Circuit Court of Appeals for the Fifth Judicial Circuit be granted.

J. TOM WATSON
Attorney General of Florida

WOODROW M. MELVIN

LAMAR WARREN

FRED M BURNS
Assistant Attorneys General

Attorneys for the Petitioners.